**IN THE HIGH COURT OF BOMBAY AT GOA**
**AT PANAJI GOA**

PIL WRIT PETITION NO._____ OF 2019

IN THE MATTER OF ARTICLES 21, 48A, 51 A(g), 226 AND 227 OF THE CONSTITUTION OF INDIA AND RULE 4(e) of THE BOMBAY HC PIL RULES;

AND

IN THE MATTER OF THE FOREST CONSERVATION ACT, 1980 AND THE BIOLOGICAL DIVERSITY ACT, 2002;

AND

IN THE MATTER OF THE GOA TOWN AND COUNTRY PLANNING ACT, 1974

AND

IN THE MATTER OF THE NOTIFIED OUTLINE DEVELOPMENT PLAN 2025 FOR THE CALANGUTE-CANDOLIM PLANNING AREA;

AND

IN THE MATTER OF THE CONSERVATION OF THE BAGA HILL IN THE INTERESTS OF INTERNATIONAL EQUITY

1. Mr. Agnelo Barreto
   No. 8, Sequeira Vaddo
   Candolim, Bardez
   Goa 403515

2. Mr. Peter D'Souza
   H No. 63-2
   Mainath Bhatti, Vaddo
   Arpora, Bardez
   Goa- 403516

3. The Goa Foundation
   through its Secretary, Dr. Claude Alvares,
   Having Regd. Office at
   Room No 7, Above Mapusa Clinic,
   Mapusa, Goa 403 507
   PAN No. AAAAG0249C
   Email id: goafoundation@gmail.com ……Petitioner

V/s

1. North Goa Planning And Development Authority
   Through
   Archdiocese Building, 1st Floor,
   Mala Link Road, Panaji, Goa

2. Town and Country Planning Department
   Through the Chief Town Planner
   having its office at 5th
   Floor, Kamat Towers, EDC Patto
   Plaza, Behind Bus Stand, Patto
   Centre, Panaji, Goa - 403 001.

3. Forest Department
   Swami Vivekanand Rd,
   Altinho, Panaji, Goa 403001

4. Collector (North)
   Collectorate Building, Opp. Municipal Garden,
   Panaji, Goa 403001

5. Village Panchayat of Arpora-Nagoa,
   Through the Sarpanch
   Arpora, Bardez
   Goa 403516

6. Village Panchayat of Anjuna
   Through the Sarpanch
   Anjuna, Bardez
   Goa 403509

7. Village Panchayat of Calangute
through the Sarpanch,
Calangute - Anjuna Rd, Naika
Waddo, Khobra Waddo, Calangute,
Goa - 403 516.

8. Goa State Biodiversity Board
C/o Department of Science, Technology and Environment,
Opposite Seminary, Saligao,
Bardez, Saligao, Goa 403511

9. State of Goa
Through its Chief Secretary
Having office at Secretariat,
Porvorim, Goa. 403521

10. Communidade of Calangute
Through the Attorney of Communidade of Calangute
Jupitors, Naikawada
Calangute, Bardez, Goa

11. Shri. Anand Chandra Bose
#801, Anand Square, Block B,
Near Sanjeevani Hospital,
Baina, Vasco Da Gama,
Goa-403802

12. M/s Riviera De Goa Resorts and Hotels Pvt Ltd
104, Gomes Catao Complex,
Near Cine Alankar Mapusa,
Bardez, Goa 403 507

13. M/S Alcon Hotels (Goa) Private Limited
1st Floor,
Velho Building
Panaji Goa 403001 …Respondents

(Above addresses are registered addresses of parties)

To,

The Hon'ble Chief Justice and Companion Judges,

Bombay High Court at Panaji, Goa

THIS HUMBLE PETITION OF THE PETITIONER

MOST RESPECTFULLY SHOWS

**Particulars of the Cause against which PIL is filed**

1. This PIL is filed to seek this Hon'ble High Court's urgent intervention for the conservation of the forested, heritage, Baga hill located in the village of Arpora-Nagoa, at the northern border of Calangute village and also partly shared by Anjuna village. A road has been proposed through the forested hill, to benefit a group of real estate interests and resort developers. For this purpose, the existing forest vegetation has been burnt and destroyed in order to commence with construction of the road, plots and buildings – a prospect, which if allowed, will mean the end of the Baga Hill for all times to come. The petitioners' right to ecology and environment, to the natural forests, to the biodiversity of the hill, is shared with the future generations under Article 21 of the Constitution and this is seriously threatened by the recent undesirable and environmentally destructive developments on the hill. The provisions of the Forest Conservation Act, 1980, apply, but these have been violated with impunity. So does the Biological Diversity Act, 2002. The development on the hill has been enabled through illegal changes made in the Final ODP 2025 of the Calangute-Candolim planning area. This PIL therefore challenges any developments proposed on the hill through the ODP 2025 of the Calangute-Candolim planning area and seeks the rehabilitation of the forest land already destroyed in pursuance of these developments.

**Particulars of the Petitioners**

2. Petitioner No. 1 and 2 are residents of Andolim and Arpora village, respectively and are members of the Calangute Constituency Forum which has taken an active interest in the protection of the Baga Hill.

Members of the Forum were among the first to respond and take action when informed about the destruction of the forest. It is due to the active vigilance of such citizens that further destruction was halted.

3. Petitioner No.3 is an environment NGO based in Goa who has approached both, this Hon'ble Court and the Hon'ble Supreme Court, time and again over the past three decades, in public interest, for enforcement of the provisions of environment, wildlife, forest, coastal regulation, land use, pollution and mining laws. All its members are citizens of India. The average annual income of the Petitioner organization is around Rs.6 lakhs.

4. The Petitioners state that there is no civil, criminal or revenue litigation involving the Petitioner which has or could have a legal nexus with the issue involved in this PIL. Registration certificates and resolution of the petitioner organisation and list of office bearers of Petitioner No.3 are herein marked and annexed to the petition as **Annexure 1 colly.** Undertaking that the petitioner will disclose the source of information leading to the filing of the PIL is herein marked and annexed at **Annexure 2**. Petitioner No.2 is assisting the petitioner No.1 pro bono.

**Particulars of the Respondents**

5. Resp No. 1 is the North Goa Planning and Development Authority responsible for the preparation of the Outline Development Plan (ODP) 2025 for the Calangute-Candolim Planning Area. Resp No. 2 is the Town and Country Planning Department. Resp No. 3 is the Forest Department which has carried out the exercise of the demarcation of

forest land on the Baga Hill and is the statutory authority with regard to Forests. Resp No.4 is the Collector (North). Resp No. 5 is the Village Panchayat of Nagoa-Arpora, under whose jurisdiction the Baga hill falls. Resp No. 6 is the Village Panchayat of Anjuna and Resp No. 7 is the Village Panchayat of Calangute. Resp No. 8 is the Goa State Biodiversity Board. Resp No. 9 is the State of Goa

6. Resp No. 10 is the Communidade of Calangute, owner of Sy No. 253/1 and 267/1 of Calangute village. Resp No. 11 is a developer from Vasco and owner of Sy No. 265 of Calangute village. Resp Nos. 12 and 13 are hotel companies, owners of land bearing Sy No. 253/1 and 267/2 of Calangute village, respectively. These are the Sy Nos on the Baga Hill through which the proposed road as per the Final ODP 2025 is shown.

**Declaration of the Petitioner**

7. The Petitioners state that this petition is filed by way of public interest to protect and conserve the forest area on the Baga Hill. The petitioners do not have any personal interest in the matter. Reliefs claimed are in public interest.

8. The Petitioners state that the entire litigation costs and other charges are being borne by the petitioners.

9. Petitioners state that adequate research has been conducted in the matter raised through the petition and all relevant material has been annexed to the petition. More may be added, if necessary, at later stage.

10. The Petitioners state that to the best of their knowledge and research the issues raised in the petition was not dealt with or decided and that a

similar or identical petition was not filed earlier by the petitioner on the same matter either in this Hon'ble Court or in the Supreme Court of India. Petitioners state that this Hon'ble Court has jurisdiction to hear and decide this matter.

11. The Petitioners have understood that in the course of hearing of this petition, the Court may require any security to be furnished towards costs or any other charges and the petitioners shall comply with such charges.

**Facts constituting the cause**

12. The 'Baga hill' is a sea cliff located towards the north of Calangute village partly included within the jurisdiction of Arpora-Nagoa Village Panchayat and partly within Anjuna village, north Goa. Until recently, the Baga hill has remained one of the only green, biologically diverse and ecologically rich havens in this northern coastal belt, providing much needed respite from commercial development to the residents of the area. As of date, there is no house or settlement on the slopes and top of the hill which for most of its area comprises natural vegetation. The only exception is the "Xavier Retreat House" in Sy No 250 of Calangute village, which was built during the period of Colonial rule, sometime in the 1950s.

13. The natural history of the Baga hill has been eruditely described in an article published by Goa University Scientist, Dr. Nandkumar M. Kamat published in '*the Navhind Times'* dated 17.02.2019. Dr. Kamat explains that the Baga sea cliff is a culmination of a series of small undulating hillocks – a range of small hills from Assagao to Baga, about

two kilometres long and a maximum of a kilometre wide. The hill range runs perpendicular to the coastal plains of Bardez and divides the eco sensitive beaches, sand dunes and low lying khazan lands of Assagao, Vagator and Anjuna villages from those of Calangute and Arpora villages. The broadly triangular Baga sea cliff faces heavy winds impregnated with sea salts which cause the growth of specific wind tolerant complex cliff vegetation similar to rare vertical forests which scientists study in other parts of the world. Trees which in the absence of strong wind attain their normal height get dwarfed on such cliffs. In 2018, huge patches of the cliff, at an altitude of 32 to 40 metres were cleared and the soil was exposed to powerful wind-based and rainfall-based erosive forces. Dr. Nandkumar estimates the age of the Baga hill cliff in terms of 90 million years. A copy of the article is enclosed as **Annexure 3.**

14. Except for some old settlements at the base of the hill, and the Xavier Retreat house, the Baga hill has been devoid of any construction, settlement and development and thus, the biodiversity of this area has flourished. The hill has steep slopes, categorized as No Development Slopes in the Regional Plan and a broad plateau on top. The slopes and upper regions of the hill are forested and provide the most beautiful coastal landscape. It is also a popular spot for avid bird watchers owing to the large variety of avian species that abound within the forest area here. A Google Earth image of the Baga Hill, showing the layout of the hill, with the No development slopes marked is enclosed as **Annexure 4.**

15. The forested nature of the hill has also been confirmed by the Forest Department as per the 'Third Progress Report on Private Forests'. This demarcation has been carried out by the Forest Department, in pursuance of the Order of the Hon'ble NGT to demarcate private forests in the State of Goa. As per the Report, the following Sy. Nos on the hill have been identified as private forests- 250, 251, 252, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 267, 268, 270. A copy of the relevant extract of the report is enclosed as **Annexure 5.**

16. Thus, on the Arpora-Nagoa side, the entire hill except survey nos. 253 and 265 have been identified as private forest by the Forest Department. However, even these two plots are covered with scattered tree cover, surrounded by natural vegetation on all sides and thus form an integral part of the forestry ecosystem. Excluding them from protection as forest would inevitably lead to the destruction of the identified forest area as well. The entire sea cliff must be protected and conserved for the current and future generations. Until recently, the natural, pristine beauty has been de-facto protected, preserved and enjoyed by all.

17. Towards the end of January, 2018, residents of Baga were shocked to find that a large part of the forested area in Sy No. 267 of the hill was being cleared by bull dozers and part of the forest was set on fire to clear the vegetation. Enclosed at **Annexure 6** are photographs of the destruction of forest that took place and of the bull dozer that was used to clear the forest. Seeing this, the villagers of Baga invaded the site and physically put a halt to the destruction. Copy of a news article reporting the same in the Herald dated 30.01.2019 is enclosed as **Annexure 7.**

18. On 29.01.2019, the Calangute Constituency Forum (of which Petitioners No. 1 and 2 are members) wrote to the Minister of Environment, Collector (North), Conservator of Forest and Wildlife, Sarpanch of Arpora-Nagoa and the Police Inspector, Anjuna Police Station, seeking the immediate stop of the illegal hill cutting and felling of trees at Baga Hill for the construction of a ten meter road. The letter states that the hill slope is being slaughtered and shaved for construction in plot bearing Sy No. 265/1, 265/2 and 253. A copy of the letter is enclosed as **Annexure 8.** On 11.02.2019, citizens filed an FIR with the Anujna Police Station. A copy of the FIR is enclosed as **Annexure 9.** It appears that the Forest Department, Ponda, has visited the plot and filed a report. The department has not seized the heavy machinery that was used in the destruction, which it is duty bound to do.

19. The exercise of destruction is sought to be legitimised by the notification of the outline development plan (ODP 2025) of the villages of Calangute, Candolim and Arpora approved by the NGPDA and published in the official gazette on 29.11.2018. A copy of the Gazzette is enclosed as **Annexure 10.** The ODP includes within it the illegal conversion of forested land on the Baga hill into settlement zone in order to allow real estate projects to come up, and construction of a road to be laid through forest land. The impugned changes in the ODP were manipulated and approved by a sub-committee (set up under Section 35 (3)) of the TCP Act) that is wholly lacking in any environment and planning expertise. These changes were not reflected or disclosed, as is required, in the Draft version of the ODP 2025 published for comment, as most of these changes have been specifically requested by the plot

owners in the guise of objections to the draft. The existence of private forest areas on the hill has been wholly ignored while approving these changes. The Panchayat appears to be collaborating the NGPDA to carve out the hill for real estate purposes. It does not help the cause of the environment that many of the Panchayat members are also members of the Comunidade of Calangute which owns a number a plots on the Baga hill.

20. The notified changes favour Mr. Anand Bose (Resp No.11), a private developer, and other interested private parties. The construction of an 8-10m wide road has been approved through an area identified as a private Forest (Sy No. 267) by the Forest Department so as to enable developers to clear the forest area and construct buildings taking advantage of the FAR permissible with such road width. Soon after the notification of the ODP 2025, the destruction of the forest commenced. The events leading up to and enabling this state of affairs is detailed in the paragraphs below.

21. In March, 2018, the Regional Plan 2021, which was kept in abeyance, was brought back into force. This Regional Plan was first notified in 2011. Forest identification and demarcation was carried out by the Forest Department five years later, in 2016. Due to this, the areas identified by the Forest Department are not shown as Private Forest but are shown as 'Natural Cover' which has Eco II protection. The Regional Plan states that as and when private forests are demarcated by the Forest Department, these areas are to be marked as Private Forest and treated as Eco I. Most of the hill has also been identified as 'No Development Slopes', which is also Eco I category. No development can be permitted

in Eco I zones. A copy of the relevant extract of the Regional Plan 2021 is enclosed as **Annexure 11.**

22. Petitioners submit that Mr. Bose's plot (Sy.No.265) in the midst of the forest area has been stealthily cleared of vegetation, and as per proposals reflected in the Regional Plan has been earmarked for development. As stated earlier, this was done without benefit of the reports of the forest department declaring most of the hill "forest" under the Forest Conservation Act, 1980. Despite the fact that the entire area around Mr. Bose's plot is forested, the regional plan shows two proposed roads to Mr. Bose's property through the forest in the Arpora-Nagoa side and through the forested No Development Slopes on the Anjuna Side. Both these roads do not currently exist and have been proposed in the Regional Plan in order to enable Mr. Bose to commence construction upon his property. Similar changes have now also been illegally included within the final ODP 2025 for Calangute-Candolim planning area. However, these changes do not consider the forest nature of these lands recently identified.

23. On 15.02.2018, a notification was published in the official gazette, publishing a draft ODP 2025 for the Calangute-Candolim Planning Area. A copy of the notification dated 15.02.2018 along with the relevant extract of the draft ODP is enclosed as **Annexure 12.** It is pertinent to note that the Draft ODP shows only Sy No. 265, and part of Sy No. 267 (which has been identified as private forest) on the Baga Hill as settlement zone (following the RP 21) and a road is shown through Sy No. 265 which ends at the boundary of the said survey

number. Sy No. 253 in fact is shown as Orchard on which no development is permitted.

24. As per the procedure laid down in the TCP Act, a sub-committee must be formed for the planning area, to make recommendations in respect of the various objections submitted to the Planning and Development Authority on the notified draft 2025 ODP. Such a Committee must comprise of a Town Planner and two members of the PDA. As per the draft Minutes of the 69th meeting of the NGPDA dated 09.03.2018, three separate sub-committees were constituted for the Calangute-Candolim planning area- for Calangute village, Candolim village and the Arpora-Baga Area of Calangute (which includes the Baga hill). The sub-committee constituted for the Arpora-Baga Area comprises of the following individuals:

1) Shri Augustino D'Souza-Chairman
   Member, NGPDA
2) Shri Shrikrishna Nagvekalr-Member
   Sarpanch, Village Panchayat Arpora-Nagoa
3) Shri Salim Sayyad- Member
   Panch of Village Panchayat Arpora Nagoa
4) Member Secretary-Member

25. The Minutes further record that a number of individuals included within the three sub-committees are not members of the NGPDA, and the sub-committee has to be appointed within the members of the NGPDA itself. The authority resolved that temporary association of the above persons with the NGPDA for the preparation of the ODP 2025 of the Calangute-Candolim Planning Area under Rule 6(10) and (2) of the

PDA Rules 1977. The relevant extract of the draft minutes is enclosed as **Annexure 13**. Within the Arpora Baga subcommittee, Shri Shrikrishna Nagvekalr and Shri Salim Sayyad are not members of the NGPDA.

26. As per the 71st meeting of the NGPDA dated 07.08.2018, the subcommittee report was placed before the authority. The minutes record that the Member Secretary also informed that the office of the Dy. Conservator of Forests has given a list of survey numbers provisionally identified as private forest by the VT Thomas committee in Calangute village. The authority decided unanimously not to mark the private forest in the ODP, since it is a provisional list and not the final, and the ODP prepared by the authority is a final ODP. The relevant extract of the minutes is enclosed as **Annexure 14.**

26 (a). However, on the same day the VP passed another resolution, No. 9(4), stating that the Panchayat shall construct the road leading to the proposed Jesus Center and that the Panchayat shall request the NGPDA to secure an NOC from all the intervening plot owners through which the proposed 8m tarred road is required to be constructed. In case the NOCs are not granted by the land owners, the NGPDA is required to acquire the land for the purpose of constructing the road. It further states that once the NOCs are given, the NGPDA is to take a decision to construct the road immediately, or in the alternative an NOC be granted to the Panchayat to construct the road. As per the resolution funds for the road would be requested from the Government/PWD. A copy of the resolution dated 04.12.2018 is enclosed as **Annexure 16-A**

27. On 29.11.2018, the final ODP 2025 for the Calangute-Candolim planning area was published in the Official Gazette. (Annexure 10). However, last minute changes not reflected or disclosed in the Draft ODP, were made in the final ODP, namely, the change of zone of Sy No. 253 from Orchard to Settlement and a proposed road along Sy Nos. 267 (identified as private forest), 265 and 253.

28. The Petitioners have received via RTI, a document with the sub-committee report and approval of the authority with regard to the Arpora-Baga area. The documents evidences that all the changes in the final ODP, impugned in this petition, were brought in to the final ODP based on proposals for change of zone in the guise of "objections" from the plot owners. The relevant extract of the dosument is enclosed as **Annexure 15.** These changes were not contemplated by the authority at the time of the preparation and publication of the draft ODP. The report makes it evident that change of zone was sought by private individuals for their own benefit.

29. On 04.12.2018, soon after the notification of the final ODP, the Panchayat of Arpora-Nagoa passed resolution No. 9(2) to request the NGPDA to take up the work of construction of a road leading from the existing village road at Baga, Arpora presently passing through Sy No. 270 and further leading to the "Jesus Center" proposed to be constructed in Sy No. 253/2 belonging to the Comunidade of Calangute. The resolution further states that it is resolved to request the NGPDA to obtain the NOC from the owners of the connected properties bearing Sy Nos 270, 265/1, 267 and 253/2 through which the said proposed 10 m road is to be constructed, or in the alternative, to acquire the land. A

copy of the unusual resolution dated 04.12.2018 is enclosed as **Annexure 16.**

30. The NGPDA acted with alacrity and vide letter dated 08.01.2019, wrote to the Sarpanch of the Panchayat of Arpora-Nagoa informing him that at the 75th adjourned meeting of the NGPDA held on 12.12.2018, the resolution taken by the Village Panchayat dated 04.12.2018 was taken up for discussion. The NGPDA approved the construction of a 8m wide road, subject to obtaining irrevocable NOC from the land owners in possession of the Sy Nos. The NGPDA further resolved that the landowners who give the irrevocable NOC can avail the benefits of the said proposed area of the road in terms of FAR as and when the owners will develop their properties. A copy of the letter dated 08.01.2019 is enclosed as **Annexure 17.** Thus, it is evident that the road is being constructed to encourage development of the plots on the hill. The NGPDA, its chairman and member-secretary, are heavily involved in crass real estate ventures. It is clear they are abusing the planning body for private gains.

31. It is pertinent to note that as per the Form I and XIV, the Sy Nos. of the connected properties for which NOC must be sought and FAR advantage given, belong to the Comunidade (Sy No. 265/2 and 267/1), developer Anand Chandra Bose (Sy No. 265), and two hotel companies – M/s Riviera De Goa Resorts Ltd (Sy No. 253/1) and M/s Alcon Hotels (Goa) Pvt Ltd (Sy No 267/2). A copy of the relevant Form I & XIV is enclosed as **Annexure 18.**

32. The Petitioners submit that these changes have been made in the ODP 2025 illegally, in order to allow builders to commence

construction on this pristine hill. The NGPDA is largely the vehicle for developers and real estate owners and therefore it was fairly easy for Mr. Anand Bose – a developer from Vasco who has already already effectively destroyed the Sancoale-Chicalim plateau with his buildings – to prevail upon the ODP designers to allow a road through the forest area (Sy.No. 267) in order to access his plot, obviously prior to obtaining permissions for putting up buildings on the top of the hill for sale in the global real estate market.

33. It is pertinent to note that a similar attempt to convert forest land on the hill was made in 2011, within the Regional Plan 2011 (since withdrawn). While the draft Regional Plan 2011 showed the entire hill as Orchard, the final plan included last minute changes made without public knowledge- which showed the entire forested hill as a Settlement area. A pictorial comparison of the Baga hill as per the Draft RGP 2011 and the final RGP 2011 is enclosed as **Annexure 19.** This scandal was one of the reasons, inter alia, that the Regional Plan 2011 was eventually withdrawn, with retrospective effect.

34. Further, to the best knowledge of the petitioners, the Goa State Biodiversity Board has not cleared the imminent destruction of the Baga Hill for purposes of commercial development. Thus the development would be in direct violation of the provisions of the Biological Diversity Act, 2002. Neither is there any report or NOC from the Biodiversity Management Committee of Arpora-Nagoa village or Anjuna village.

35. In these circumstances, as none of the authorities have taken the requisite action, and since the destruction of the forest at this scale will lead to irreversible environmental damage, the petitioners are constrained to urgently approach this Hon'ble High Court for protection of the hill.

**Grounds**

36. The Petitioner is therefore approaching this Hon'ble Court on the following grounds, among others:-

a. As per Section 2(ii) of the Forest Conservation Act 1980, no State Government or other authority can direct the diversion of any forest land or any portion thereof for any non-forest purpose, without the prior approval of the Central Government. This is also a direction of the Apex Court in *Godavarman*. The notified ODP violates this provision of law.

b. The Supreme Court, vide Order dated 04.02.2015 in Civil Appeal No. 37942/2014 (*Goa Foundation V/s State of Goa* ) has directed that the Government will not issue any NOCs for the conversion of any plot that has natural vegetation with tree canopy density in excess of 0.1 and an area above 1 hectare. A copy of the order dated 04.02.2015 is enclosed as **Annexure 20.** The areas of the plots in question are as per the respective Form I & XIV are as follows:

   Sy No. 253 = 8.2075 hectare

   Sy No. 265= 3.19 hectare

   Sy No. 267 =4.485hectare

The Form I and XIV of all these plots show the entire area as "Garden" which denotes areas under orchard or tree cover.

c. Vide Order dated 26.03.2012 in WP No. 495/2010, the Hon'ble High Court of Bombay at Goa accepted and recorded the statement of the Advocate General that authorities would not issue any NOCs for the conversion of any plot that has tree canopy cover in excess of 0.1 and area above 1 hectare. A copy of the Order dated 26.03.2012 is enclosed as **Annexure 21.**

d. The change of zoning of forest lands until the complete demarcation of forest land in the State of Goa has also previously been prohibited by the Hon'ble High Court of Bombay at Goa vide order dated 02.07.2003 in WP No. 286/2003 (*Sandeep Azrenkar V/s State of Goa*). A copy of the Order dated 02.07.2003 is enclosed as **Annexure 22**.

e. Petitioners thus submit that once an area is identified or declared as forest, or satisfies the criteria laid down by the Hon'ble Supreme Court and High Court, no change of land use or conversion for development and construction is permitted. These protections have been put in place to ensure that development takes place sustainably. They ensure that vital forest land – natural vegetation is not mindlessly destroyed and converted into concrete jungles so that future generations can also benefit from them.

f. Despite these protections, large scale destruction has already been caused to the forest area on Baga Hill in Sy No.267 in order to commence construction of the road. Photographs enclosed within this petition evidence the brutal and rapacious manner in which the forest was hacked and burned to the ground. Had it not been for the vigilant citizens, irrevocable damage would have been perpetuated to the pristine forest area. The proposed construction of the road through Sy Nos 267, 265 and 253 of Calangute village, as shown in the final ODP 2025 poses a fatal threat to the remaining forest area.

g. The Baga hill is covered under dense tree canopy and as such, the entire hill (Slopes and top) must be identified as and protected as a private forest. As per the demarcation exercise carried out by the Forest Department, most of the hill has already been marked as a private forest except for Sy Nos.265 and 253. However, the Forest Department has only identified areas having 0.4 canopy density and which are over 5 hectares, as forest. As per the Hon'ble Supreme Court and High Court's orders, even Sy Nos. 265 and 263 would have to be prohibited from the proposed development.

h. Furthermore, the Petitioners submit that the Forest Department's professional opinion should be sought on whether Sy. no. 265 of Arpora-Nagoa village is part of the forestry ecosystem, even though it has now sparse vegetation, as it is surrounded by forests on all sides. The Forest Department must opine whether any development should be permitted on that plot in view of it being

located right in the midst of overwhelming forest area. Forest ecosystems must be protected as a whole in order for the biodiversity to thrive and for the ecological balance to be maintained. Patchwork protection of forests would not be sustainable.

i. Prior to such changes that would drastically affect and alter the biodiversity and environment on the Baga hill, it was pertinent that the Goa State Biodiversity Board ought to have been consulted. The Arpora-Nagoa and Anjuna village Biodiversity Management Committees should have played an active role in any discussions of diversion of this biodiversity hot spot. However, no survey, report or consultation was done with the Biodiversity Committee or State Board. To the best knowledge of the Petitioners, no Biodiversity Management Plan has been made to protect the forested hill.

j. The present as well as future generations are entitled to a complete restoration of the destroyed forest of Baga hill, and the protection of the entire hill as a no development zone. The forested hill is rich in biodiversity and houses a large variety of flora and fauna. It is enjoyed by bird watchers, trekkers, and citizens seeking a much needed escape from congested villages in the vicinity.

k. The Hill, a popular haven for birdwatchers, is reported to have sightings of a large number of avian species such as Coppersmith Barbets, Indian Golden Oriole, Green Bee-eaters, Oriental Magpie-Robin, White cheeked Barbet, Asian Koel, White-

rumped Munias, Scaly-breasted Munias, Lotens Purple rumped and Crimson-backed sunbirds, and Black-headed Cuckooshrike, to name a few. It also boasts of a beautiful range of butterflies including Plain and Striped Tigers, Common Sailors and perhaps best of all, Southern Birdwing – the largest butterfly found in India. These wild creatures have equal rights to this habitat, and their concerns have not been considered while changing the zones to settlement. Such anthropocentric practices have attracted the criticism of the Hon'ble Supreme Court.

l. In the article enclosed as Annexure 5, Dr. Nandkumar also states that the seaside cliff is geologically unstable and undergoes frequent slope instabilities. All along the Baga-Anjuna coastline the sea has been mercilessly attacking the beaches and the rocky intertidal stretches. In view of such threats, it is thoughtless to cause further destruction of the seaside cliff besides loss of precious wildlife habitats, plant species, flora, fauna and biodiversity. Commencement of new constructions on this cliff would throw up the 2 km long hill for frantic development

m. The Hon'ble Supreme Court has held that the violation of intergenerational equity is a violation of fundamental rights under Article 21. The Hon'ble Supreme Court has stated that forests in India are an important part of the environment and constitute a national asset, and has cautioned that if deforestation takes place rampantly, then intergenerational equity would stand violated. The Baga hill is a part of our natural heritage which is subject to intergenerational equity norms. It was inherited from our

ancestors and we have to hand it over intact to the next generation. The entire zone has to be declared as no development zone (which it is as present) so as to preserve it for the current and future generations.

n. The need to protect and preserve the environment for the future generations has also been elucidated in the Hon'ble High Court of Calcutta in *People United for Better Living in Calcutta v. State of W.B. & Ors* [AIR 1993 Cal 215]. The Hon'ble High Court of Calcutta stated:

> "While it is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation, though, however, may not be felt in present but at some future point of time, but then it would be too late in the day, however, to control and improve the environment. Nature will not tolerate us after a certain degree of its destruction and it will in any event, have its toll on the lives of the people: Can the present-day society afford to have such a state and allow the nature to have its toll in future - the answer shall have to be in the negative."

The above observations have been quoted with approval by the Hon'ble Supreme Court in *M.C. Mehta v. Union of India*. [AIR2001SC1544]

o. As these orders of the High Court and the Supreme Court on forest and environment protection are widely known and must be adhered to, strict sanctions must be imposed upon the parties responsible for the destruction of forest. The destruction of the forest is a blatant violation of the fundamental rights of the current as well as future generations. Such illegal activities need to be sternly viewed by this Hon'ble High Court and punitive action must be called in an exemplary fashion – as was done by the Supreme Court in the case of Maharashtra when it sent both the Forest Minister and State Chief Secretary to jail for one month because of conscious violation of its orders in the *Godavarman* case.

p. The Petitioners submit that the ecologically rich, pristine hill was free from such threats until it was, without any reason, brought under the concept of planning area and handed over to the NGPDA for preparation of the development plan. In fact, at first the Baga hill was not included within the Calangute-Candolim Planning Area. Vide a modification notification dated 20.10.2015, the boundary of the planning area was expanded to include the Baga hill, bringing it under the ambit of the ODP. No grounds have been provided for this inclusion, except the potential for lucrative real estate. A copy of the notification dated 20.10.2015 is enclosed as **Annexure 23.** This was done consciously despite the provision of the Panchayat Raj Act 1994 and the 73rd Constitution Amendment Act which brought in full Panchayati Raj and placed planning under the ambit of local institutions.

q. The NGPDA, along with its sub-committee, mischievously inserted changes in the ODP 2025 to facilitate development in this area, with absolutely no regard or study of the impact that such development would have upon the ecology and biodiversity of the area. From the communication of the NGPDA dated 08.01.2019 relaying the events of the meeting dated 12.12.2018, it is evident that discussion regarding the construction of a 8-10m road was only viewed in terms of the benefit that could be accrued to the builders. The impact on – or even the existence of the forest habitat – did not feature in the discussions. Similarly, a road was approved in the Regional Plan 2021, through forest area and no development slopes, solely for the benefit of the developers.

r. Though the NGPDA was well aware that the demarcation of the forest area on the hill had been done by the Forest Department, changes were approved on the forested hill without any consultation with the forest department, or without any consideration of forest department's report and the survey numbers identified as forest therein.

s. The impugned changes in the ODP have been carried out in complete violation of the TCPA and the procedure prescribed under the Act. Section 35 of the Act mandates that the Draft ODP must be published for objections. Thereafter, a sub-committee must be constituted to consider the objections so raised. Only bonafide objections citing errors or furthering public interest must be considered to change the Draft ODP so published. Planned development and the participation in the same is a fundamental

right of the citizens guaranteed under Article 21 of the Constitution of India. This fundamental right is reflected in Section 35 of the TCPA and cannot be abrogated by authorities in power, seeking to make surreptitious changes in the ODP for the benefit of private individuals. However, though the Draft ODP was published for comments, a comparison of the Draft ODP and the Final ODP reveals that the changes impugned in this petition do not reflect in the draft ODP.

t. It is evident that the impugned changes have all been included based on requests for change of zone made by the owners of the properties under the guise of objections to the draft ODP. Objections to the ODP can only be entertained where the zonal categorization has been erroneously changed in the draft ODP, or a change is required to further necessary public interest. None of the changes sought and approved were errors, nor do they further any public interest. Infact, in certain cases, the project proponent has specifically stated that change of zone is required for tourism related activities, or because work has been proposed there. The TCPA does not permit any applications for change of land use in the ODP, at any stage, on the basis of applications from the owners of the land.

u. Since the impugned changes were not included in the Draft ODP, citizens did not have any scope to examine or make objections regarding the same. The NGPDA and the Sub Committee effected such changes to benefit the developers and plot owners, and to enable development to come up on the forested hill. The Report

of the Forest Department, identifying the private forest on the hill was not even referenced before forest area was converted. Thus, these changes, made in blatant violation of the Forest Conservation Act, 1980, Supreme Court and High Court orders, also violate the fundamental rights of the citizens and the procedures established by law.

v. The Forest Identification Report of the Forest Department, even if stated to be provisional, is bound to be considered, and in view of the precautionary principle and Orders of the Hon'ble Supreme Court and High Court no changes whatsoever can be permitted on the survey numbers so identified.

w. The procedure adopted for the constitution of the sub-committee is illegal. Section 35(3) of the TCPA specifically provides for the Constitution of the sub-committee and mandates that the Planning and Development Authority shall appoint a Committee consisting of the Town Planning Officer and not more than two of its other members, to consider the objections received with regard to the Draft ODP. Section 35(4) further states that the Committee appointed under sub-section (3) shall have power to co-opt any other person and any person so co-opted shall have a right to take part in the meetings of the Committee, but shall not have a right to vote.

x. Thus, as per section 35 (3) and (4), one sub-committee must be constituted for each planning area. The sub-committee must only consist of a Town Planning Officer and two members of the NGPDA. Persons who are not members of the NGPDA can only

be “co-opted” only by the sub-committee so constituted. The NGPDA cannot co-opt individuals into the sub-committee. Further, Persons so co-opted may attend meetings of the sub-committee, but they do not have the power to vote.

y. Instead, three separate sub-committees have been constituted for the same planning area. Shri Shrikrishna Nagvelkar and Shri Salim Sayyad, who are not members of the NGPDA, have been appointed as “Members” of the sub-committee for the Arpora Baga area, by the NGPDA- under Rule 6 of the Goa, Daman, Diu, Town & Country Planning (Planning & Development Authority) Rules, 1977, which deals with the temporary association of persons with the planning and development authority for particular purposes.

z. It is a trite position of law that the Rules cannot contradict the Act, and thus, these individuals, who are not members of the NGPDA, could not have been appointed as members to the Sub Committee by the NGPDA, using provisions under the Rules. These individuals can at the most, be co-opted under Section 35(4), by the sub-committee. The same has also been noted by the NGPDA in its meeting, yet the procedure has not been followed. In any case, neither of the two persons is qualified in any manner to sit on the Sub-Committee.

aa. Thus, all changes that have been brought in and approved at the stage of objections- based on the request of private parties- by the sub-committee which has been illegally constituted are liable to be quashed and set aside.

bb. Being well aware of the forested nature of the hill and the report of the Forest Department demarcating the private forests, the sub-committee for the Baga Arpora area, which is mostly the Baga hill, ought to have instead, co-opted forest and environment experts, or members of the forest department for better consideration of these issues. Instead, they chose to bypass the provisions of law in order to include Panchayat members into the subcommittee, to further development interest of builders in a pristine and forested environment.

cc. The decision of the NGPDA taken at the 72nd adjourned meeting dated 12.12.2018 and the resolution No 9(2) and Resolution no. 9(4) dated 04.12.2018 of the panchayat of Arpora-Nagoa, in so far as they seek to violate or lead to violation of the provisions of the Forest Conservation Act and Orders of the Hon'ble Supreme Court and High Court are liable to be quashed and set aside.

dd. Such other and further grounds that may be urged at the time of hearing.

37. In the above circumstances, the Petitioner has no other alternate remedy but to file the present petition. The Petitioner states that under the facts and circumstances, if this Hon'ble Court grants the prayers then there would be complete justice to the Petitioner and to the society at large which they represent in public interest.

38. The Petitioner has not filed any other petition on the subject matter of this petition before this Hon'ble Court or the Hon'ble Supreme Court.

39. That the copies of the documents annexed to this petition are the true copies of the originals. The Petitioner craves leave to produce compilation of relevant documents if and when required.

40. The Petitioner states that this Hon'ble Court has jurisdiction to entertain, try and dispose of the present petition. The Petitioner has no other efficacious remedy except filing of present petition and by granting relief the Petitioner shall get justice.

41. The court fee of Rs. 150/- is paid herewith.

**Source of Information**

42. The Petitioners are relying on information received under the provisions of the RTI Act, 2005.

**Nature and extent of Injury caused / apprehended**

43. The Baga Hill is a treasure trove of biodiversity in the middle of an otherwise congested area. The hill is forested and thus, must be protected and preserved as such for the generations to come and for today's generation in the context of climate change. Due to changes illegally made in the final ODP 2025 of the Calangute-Candolim Planning area, large areas of the forested hill have already been destroyed by tree felling and burning of the trees. If further development is permitted, the forest and ecologically rich area would be irreversibly destroyed.

**Delay, if any, in filing the petition**

44. There is no delay in filing this petition. Petitioners became aware of the destruction of the forest area on the hill in the end of January, 2019. The Petitioners along with other concerned citizens immediately put a stop to the activities. Petitioners Nos. 1 and 2 also wrote to a number of authorities. Subsequently, research was carried out into the matter, and documents received via RTI that revealed the extent of the illegal activities and changes made in the final ODP 2025. Petitioner No. 1 and 2 then approached Petitioner No 3 for assistance and this PIL was filed.

**Representations made**

45. Petitioner No. 1 and 2 has made representations to concerned authorities through letter dated 29.01.2019 enclosed to this Petition as **Annexure 9.** Petitioner No.3 brought the forest destruction to the notice of the Forest Department when it visited the Department in the course of a routine visit.

**Documents relied upon**

46. List of documents to be relied upon is provided in the index.

**Prayers:**

47. Petitioner is therefore praying for the following reliefs, in public interest:

a) For an order declaring the Baga hill comprising of Sy Nos. 250, 251, 252, 253, 254, 255, 256, 260, 264, 265, 266 and 267 of Calangute village as a No-Development Zone;

b) For a declaration that the Baga Hill is subject to the demand of the Principle of Intergenerational Equity;

c) For an order quashing and setting aside the proposed road as per the ODP 2025, through Sy No. 267, 265 and 253 of Calangute village;

cc. For an order directing the demolition/removal of the road constructed through the subject plots, and for restoration of the area to its original condition;

d) For an Order quashing Resolution No. 9(2) and 9(4) dated 04.12.2018 passed by the Village Panchayat of Arpora-Nagoa regarding the construction of the 10 m wide road on Baga hill;

e) For an Order quashing and setting aside the Zone change of Sy No. 253 of Calangute village from Orchard to Settlement, as per the ODP 2025;

f) For an order quashing and setting aside the road proposed to Sy No. 265 of Calangute village through the No development slopes and forest area on the Anjuna side of the Baga Hill, as per the Regional Plan 2021;

g) For an Order directing that the Forest area of the Baga hill that has been destroyed to be rehabilitated and the land restored to its original condition and biodiversity;

h) For an Order imposing sanctions upon the Respondents held responsible for destruction caused to the Baga Hill;

i) For costs of this petition;

j) Any other reliefs this Hon'ble Court may be pleased to grant.

**Interim reliefs:**

k) Pending hearing and final disposal of this petition, for an order staying any development proposed on Baga Hill, more specifically on Sy Nos. 253, 265 and 267 of Calangute Village;

**Caveat**

48. No notice has been received of lodging a caveat by the opposite parties.

Place: Panaji-Goa.
Date: Petitioner No.1

Petitioner No. 2

Petitioner No. 3